IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.142 of 2003

With

CMP(M) No.219 of 2006.

Decided on: ***November 16, 2007***

For parties, please see over-leaf:

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant:]
]
For Respondents:]

Please, see over-leaf:

Kuldip Singh, Judge (Oral)

In order to understand the controversy the brief facts which are relevant for disposal of these cases are given below from both FAO No.142 of 2003 as well as CMP(M) No.219 of 2006.

FAO No.142 of 2003

Smt.Vinod Kumari Chandel and Tejasvita Chandel for claiming compensation on account of death of Ram Pratap Chandel and damage to Car No.HP-12-0844 filed petition under Section 166 of the Motor Vehicles Act before Motor Accident Claims Tribunal (II), Solan, Camp at Nalagarh (for short 'the Tribunal') against Divesh Kumar, owner; Lal Singh, Driver and National Insurance Company, insurer of truck bearing registration No.HP-51-1299 which due to rash

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment ? Yes***

and negligent driving of the truck driver hit Maruti Car No.HP-12-0844 on 23.7.1997. Ram Partap Chandel owner of car HP-12-0844 was travelling in the car at the time of accident, he suffered injuries in the accident and ultimately died on 24.7.1997 . The car was also damaged in the accicent. The claim petition was contested, the Tribunal on 20.10.2001 awarded Rs.5,10,500 to the claimants with a direction to the insurer of the truck to pay the award amount within 30 days from the date of award failing which interest at the rate of 12% per annum shall be payable. The Insurance Company filed FAO No.142 of 2003 against the award dated 20.10.2001. Abhilasha Chandel was not party in the claim petition. She filed CMP No.23 of 2003 in the appeal which was allowed and she was impleaded as respondent No.5. At the time of filing of the appeal, respondent No.2 Tejasvita Chandel was minor, during the pendency of the appeal she became major and accordingly CMP No.545 of 2007 was filed whereby Tejasvita sought permission to defend the appeal in her own right as she has attained majority. This application was allowed on 5.7.2007.

CMP(M) No.219 of 2006:

2. Tejasvita filed separate appeal against the award dated 20.10.2001, along with appeal she filed an application under Section 5 of the Limitation Act for condonation of delay in filing the appeal against the award dated 20.10.2001, which has been registered as CMP(M) No.219 of 2006. Divesh Kumar, owner of the truck, has contested this application by filing the reply. Tejasvita was minor when this

application was filed, she filed CMP No.546 of 2007 seeking permission to continue the application / appeal in her own right as she has become major. This application was allowed and Tejasvita was permitted to pursue the application/appeal in her own right.

3. FAO No.142 of 2003 and CMP(M) No.219 of 2006 along with appeal were heard in part on 14.11.2007. Both these matters were taken up today and learned counsel for the parties submitted that since Abhilasha Chandel has been impleaded as respondent No.5 in FAO No.142 of 2003 and in the facts and circumstances of the case they have no objection if CMP(M) No.219 of 2006 is allowed, delay in filing the appeal against award dated 20.10.2001 passed by Tribunal is allowed and thereafter in both the appeals impugned order is set aside, case is remanded to the learned Tribunal with a direction to Tribunal to proceed with the case from the stage calling upon Abhilasha Chandel to file her reply and give opportunity to the parties to lead evidence and decide the claim petition afresh within certain time frame. Hence with the consent of the parties through their counsel, the following order is passed:-

(i) CMP(M) No.219 of 2006 is allowed, for the reasons stated in the application delay in filing the appeal is condoned. Appeal filed by Tejasvita against award dated 20.10.2001 is admitted and the same be registered. The parties in the appeal filed by Tejasvita are same as in FAO No.142 of 2003 and, therefore, learned counsel representing

the parties in FAO No.142 of 2003 have accepted notice in the appeal filed by Tejasvita on behalf of their respective parties.

(ii) FAO No.142 of 2003 and appeal filed by Tejasvita against award dated 20.10.2001 are allowed and award dated 20.10.2001 passed by Motor Accident Claims Tribunal (II), Solan, Camp at Nalagarh in MAC petition No.14-NL/2 of 1998 is set aside and case is remanded to learned Tribunal for fresh decision in accordance with law.

(iii) In view of the fact that Abhilasha Chandel was impleaded as respondent No.5 in FAO No.142 of 2003, therefore she is impleaded as respondent in claim petition M.A.C. Petition No. 14.NL/2 of 1998 with liberty to her to approach the Tribunal for transposition as claimant in the said petition. In case an application for transposition as claimant is filed by Abhilasha Chandel before the Tribunal then such application shall be decided by the Tribunal in accordance with law.

(iv) Abhilasha Chandel shall be given reasonable opportunity by the Tribunal to file reply and defend / pursue the petition as the case may be. Tejasvita shall be at liberty to pursue the claim petition in her own right.

(v) The Tribunal shall proceed with the claim petition from the stage of replies onward. It is clarified that since

Abhilasha Chandel has been impleaded as party in the claim petition, therefore, the Tribunal shall give her reasonable time to file reply and to the other side to file rejoinder, if any. The Tribunal shall recast the issues, if need be, and after giving opportunity to the parties to lead evidence shall decide the claim petition afresh as early as possible but before ***31.8.2008.***

(vi) The amount deposited by Insurance Company in this Court in pursuance of the award of the Tribunal which has been set aside shall be sent back to the Tribunal along with interest which shall be payable ultimately as per fresh award to be passed by Tribunal after remand.

4. CMP No.340 of 2006 under Order 1 rule 10 read with section 151 CPC filed by Abhilasha Chandel for permission to become a claimant and CMP No.341 of 2006 under Order 41 Rule 27 read with Section 151 CPC for additional evidence again filed by Abhilasha Chandel in FAO No.142 of 2003 are disposed of as infructuous in view of order passed in main appeal.

5. Application under Order 41 Rule 27 read with Section 151 CPC filed by Tejasvita for additional evidence and another application under Order 41 Rule 1 read with Section 151 CPC for filing of certified copy of judgment dated 20.10.2001 again filed by Tejasvita in CMP(M) No.219 of 2006 are disposed of as infructuous

in view of order passed in the CMP(M) No.219 of 2006 and the appeal filed by Tejasvita.

6. FAO No.142 of 2003, CMP(M) No.219 of 2006 along with appeal filed by Tejasvita are disposed of in the above terms. The parties through their counsel are directed to appear before learned Motor Accident Claims Tribunal-II, Solan on 1.12.2001, who shall decide MAC Petition No.14-NL/2 of 1998 in terms of the above directions. The Registry is directed to transmit the record of the learned Tribunal so as to reach before the date fixed. No costs.

(Kuldip Singh), J.

November 16, 2007
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1. ***<u>FAO No.142 of 2003</u>*:**

National Insurance Co. Ltd. ***…Appellant.***

Versus

Smt.Vinod Kumari & Ors. ***…Respondents.***

For the appellant: ***Mr.Deepak Bhasin, Advocate.***

For the respondents: ***Mr.N.S.Chandel, Advocate for respondent No.1.***

Mr.Shrawan Dogra, Advocate for respondents No.2 and 5.

Mr.Neeraj Sharma, Advocate for respondents No.3 and 4.

2. ***<u>CMP(M) No.219 of 2006 with FAO No.465/2007</u>:***

Tejasvita ***…Appellant.***

Versus

Smt.Vinod Kumari & Ors. ***…Respondents.***

For the appellant: ***Mr.Shrawan Dogra, Advocate.***

For the respondents: ***Mr.N.S.Chandel, Advocate for respondent No.1.***

Mr.Neeraj Sharma, Advocate for respondents No.3 & 4.

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